

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

MARTIN MANZO-GONZALEZ,	)	No. CV-F-04-6094 OWW
	)	(Nos. CR-F-03-5239 OWW; CR-
	)	F-03-5240 OWW)
)	
Petitioner,	)	ORDER GRANTING MOTION TO
	)	VACATE, SET ASIDE OR CORRECT
vs.	)	SENTENCE PURSUANT TO 28
	)	U.S.C. § 2255, VACATING
	)	SENTENCE, DIRECTING FEDERAL
UNITED STATES OF AMERICA,	)	DEFENDER TO APPOINT COUNSEL,
	)	AND DIRECTING U.S. MARSHAL
	)	TO RETURN PETITIONER FOR RE-
Respondent.	)	SENTENCING ON MONDAY,
	)	DECEMBER 4, 2006 AT 10:00
	)	A.M. IN COURTROOM 7

On August 13, 2004, petitioner Martin Manzo-Gonzalez filed a timely motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

Petitioner was charged in No. CR-F-03-5239 with being a deported alien found in the United States in violation of 8 U.S.C. § 1326. Petitioner was charged in No. CR-F-03-5240 with one count of conspiracy to possess and distribute a listed

1 chemical, pseudoephedrine, knowing that the pseudoephedrine would
2 be used to manufacture a controlled substance in violation of 21
3 U.S.C. §§ 841(a)(1) and 846; and three counts of distribution of
4 methamphetamine in violation of 21 U.S.C. § 841(a)(1).

5 Petitioner was represented in both cases by Steven Crawford. On
6 October 24, 2003, by written Plea Agreement, petitioner pleaded
7 guilty to being a deported alien found in the United States and
8 to one count of distribution of methamphetamine. The Plea
9 Agreement provided in pertinent part:

10 **IV. Joint agreements between the parties.**

11 The parties stipulate that the drug quantity
12 attributable to the defendant's offense of
13 conviction and its relevant conduct is the
14 methamphetamine distributed by the defendant
15 on May 13, 21, and 28, 2003 as alleged in
16 Indictment No. Cr.F 03-5240; more
17 specifically approximately 127 grams (gross
weight) of a mixture or substance containing
methamphetamine. The parties stipulate and
agree to substitute the net weight (gross
weight reduced by any packaging weight) if
that net weight is lower than 127 grams.

18 ...

19 **VI. Factual Basis for Plea Agreement.**

20 The defendant will plead guilty because he is
21 in fact guilty of the crimes to which he will
22 admit guilt. The defendant also agrees that
23 his guilty plea will be based upon the
24 following facts, although he acknowledges
25 that, as to other facts, the parties may
26 disagree.

...

Defendant further agrees that the following
are true and correct facts as to case CrF 03-
5240 OWW:

1 On or about May 13, 2003 in the
2 County of Merced, State and Eastern
3 District of California, defendant
4 Martin Manzo Gonzalez distributed
5 methamphetamine to another person
6 or persons. The amount distributed
7 was more than fifty (50) grams of a
8 mixture or substance containing
9 methamphetamine. At all relevant
10 times, defendant Martin Manzo
11 Gonzalez knew he was distributing
12 methamphetamine and that
13 methamphetamine is a controlled
14 substance.

15 Petitioner was sentenced on January 12, 2004 in both cases to 120
16 months, to run concurrently, and a 60 month term of supervised
17 release. Petitioner did not file a notice of appeal.

18 In moving for relief pursuant to Section 2255, petitioner
19 asserts the following claims:

20 1. Whether counsel was ineffective for
21 failing to object to the sentence on the
22 ground that the Sentencing Guidelines and
23 procedures used to determine the sentencing
24 facts were unconstitutional under *Apprendi v.*
25 *New Jersey*.

26 2. Whether counsel was ineffective because
of "lack of research and investigation of the
law of Blakely upon failure to notice Blakely
future impact which was granted certiorari
during the petitioner's proceedings".

3. Whether counsel's "failure to pursue
and/or notice his client of what the law of
Apprendi was render the plea of guilty as
void upon lack of information regarding the
quantity as element of the offense before the
entry of plea of guilty."

4. Whether petitioner's "direct appeal
waiver was unknowingly and unvoluntarily
[sic] made but procured through counsel
constitutionally ineffective during the
negotiations upon lack of investigation of
the case as a whole".

1 5. Whether the guilty plea "was involuntary
2 and unknowing [sic] upon counsel ineffective
3 assistance pursuant lack [sic] of knowledge
 of the law in reference to the facts of the
 case in violation of movant due process".

4 6. Whether the direct appeal waiver "was
5 unknowingly and unintellignet [sic] and
6 unvoluntarily [sic] made due to counsel
7 ignored request from his client to files
8 [sic] a notice of appeal and direct appeal
 acknowledged actually the petitioner's
 sentence is illegal which doesn't include a
 waiver of one illegal sentence under the
 facts of the present case".

9 7. Whether counsel was ineffective "upon
10 lack of objection and contention that the
11 government did not proved [sic] the
12 quantities of methamphetamine which movant's
13 [sic] admitted to were 'actual
14 methamphetamine' as opposed to a mixture
 containing methamphetamine for sentencing
 purposes and whether it was an [sic]
 defendant or government burden for sentencing
 designs".

15 8. Whether petitioner's guilty plea "was
16 affected as consequence of government
17 Brady/Giglio/Agurs violations before the
 entry of plea of guilty and due to counsel
 [sic] lack of investigation and consultation
 with his client".

18 9. Whether petitioner "was entitled to
19 manipulation or sentencing entrapment
20 contention and was deprived due to counsel
 lack of investigation and government
 disclosure violations".

21 In responding to this motion, the United States concedes
22 that petitioner is entitled to relief with respect to his claim
23 no. 7 above that he was improperly sentenced to the mandatory
24 minimum of ten years imprisonment based on the distribution of
25
26

1 127 grams of a mixture or substance containing methamphetamine.¹

2 Because of this concession, resolution of the other grounds
3 for relief asserted in the motion is not necessary. When
4 petitioner is returned for re-sentencing, counsel for petitioner
5 may raise any issues deemed appropriate at that time.

6 ACCORDINGLY, as set forth above:

7 1. Petitioner Martin Manzo-Gonzalez's petition to vacate,
8 set aside or correct sentence pursuant to 28 U.S.C. § 2255 is
9 GRANTED and Petitioner's sentence is VACATED.

10 2. The Federal Defender is ordered to appoint counsel to
11 represent petitioner.

12 3. The U.S. Marshal is ordered to return petitioner to the
13 Eastern District of California, Fresno, for re-sentencing in
14 Courtroom 7 on Monday, December 4, 2006 at 10:00 a.m.

15 IT IS SO ORDERED.

16 **Dated: October 13, 2006**
668554

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

23 ¹21 U.S.C. § 841(b)(1)(A)(viii) imposes a mandatory minimum
24 sentence of ten years for the distribution of "500 grams or more of
25 a mixture or substance containing a detectable amount of
26 methamphetamine ...". Section 841(b)(1)(B)(viii) imposes a
mandatory minimum sentence of five years for the distribution of
"50 grams or more of a mixture or substance containing a detectable
amount of methamphetamine."